

GENERAL SERVICES ADMINISTRATION
WASHINGTON, D. C. 20405

March 27, 1978

FEDERAL PROCUREMENT REGULATIONS
AMENDMENT 191

TO : Heads of Federal agencies

SUBJECT: Change to the Federal Procurement Regulations (FPR)

1. Purpose. This amendment transmits changed pages to the Federal Procurement Regulations.
2. Effective date. The regulation transmitted by this amendment is effective May 15, 1978, but may be observed earlier.
3. Background. The Energy Policy and Conservation Act (42 U.S.C. 6361(a)(1)) requires the development of mandatory standards with respect to energy conservation and energy efficiency. The Act applies to the procurement policies and decisions of the Federal Government. Executive Order 11912 required the Administrator of Federal Procurement Policy to provide policy guidance concerning the application of energy conservation and efficiency standards to the Federal procurement process. The Administrator of Federal Procurement Policy issued Policy Letter 76-1 requesting heads of Federal departments and establishments to ensure application of the principles of energy conservation and efficiency in the procurement of property and services. The General Services Administration, in cooperation with the Department of Defense, developed the procedures prescribed by this amendment.
4. Explanation of changes. Section 1-1.339 is added, which prescribes procedures designed to achieve energy conservation and efficiency by means of the procurement process.


JAY SOLOMON

Administrator of General Services

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PART 1-1.3

GENERAL POLICIES

1-1.327-5 (b)

However, the criminal penalties of the Act do not extend to contractors or their employees who design or develop systems of records pursuant to a Government contract.

(c) An agency which, within the limits of its authority, fails to require that systems of records on individuals operated on its behalf under contracts be maintained in accordance with the Act may be civilly liable to individuals injured as a consequence of any subsequent failure to maintain records in conformance with the Act. Any officer or employee of the agency may be criminally liable for violations of the Act. The reference in the Act to the contractor and his employees as employees of the agency is intended only for the purposes of the criminal penalties of the Act and not to suggest that, by virtue of this language, they are employees for any other purposes.

§ 1-1.327-4 Applicability.

(a) Whenever a Federal agency contracts for the design, development, operation, or maintenance of a system of records on individuals on behalf of the agency in order to accomplish an agency function, the agency must apply the requirements of the Act to the contractor and his employees working on that contract. Systems of records on individuals operated under a contract which are designed to accomplish an agency function are deemed to be maintained by the agency and are subject to Section 3 of the Act.

(b) (1) In order to establish the applicability of the clause in § 1-1.327-5, it is necessary for the agency awarding a contract to determine whether a purpose of any system of records on individuals which may be involved is to accomplish an agency function. For the Act to be applicable, the contract need not have as its sole purpose the design, development, or operation of such a system of records, but the contract should specifically state whether it involves the design, development, or operation of a system of records. The Act is not applicable to a system of records used by a contractor as a result of his management discretion. For example, it is not applicable to systems of personnel records maintained by contractors on their own behalf.

(2) Illustrations of systems of records to which the Act applies include the following:

(i) The determinations on benefits are made by Federal agencies;

(ii) Records are maintained for administrative functions of a Federal agency, such as personnel and payroll; or

(iii) Health records are maintained by an outside contractor engaged to provide health services to agency personnel.

(3) Illustrations of systems of records to which the Act does not apply include the following:

(i) Records are maintained by the contractor on individuals whom the contractor employs in the process of providing goods and services to the Federal Government; or

(ii) An agency contracts with a State or private educational organization to provide training, and the records generated on contract students pursuant to their attendance (admission forms, grade reports) are similar to those maintained on other students and are commingled with their records on other students.

§ 1-1.327-5 Procedures.

(a) All procurement requirements shall be reviewed to determine whether the design, development, or operation of a system of records on individuals to accomplish an agency function will be required, and the related contract shall identify specifically which of those functions is to be performed by the contractor. If the design, development, or operation of such a system is required, related solicitations and contracts shall include the notification set forth in § 1-1.327-5 (b) and the clause set forth in § 1-1.327-5 (c). Pertinent implementing agency rules and regulations shall be made available in accordance with agency procedures. All contract work statements shall specifically identify (1) the system or systems of records and (2) the work to be performed by the contractor in terms of any one of the following: (i) design, (ii) development, or (iii) operation.

(b) The following notification shall be included in every solicitation and resulting contract, and in every contract awarded without a solicitation, when the statement of work requires the design,

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1-1.327-5 (b)

development, or operation of a system of records on individuals for an agency function:

PRIVACY ACT NOTIFICATION

This procurement action requires the Contractor to do one or more of the following: design, develop, or operate a system of records on individuals to accomplish an agency function in accordance with the Privacy Act of 1974, Public Law 93-579, December 31, 1974 (5 U.S.C. 552a) and applicable agency regulations. Violation of the Act may involve the imposition of criminal penalties.

(c) The following clause shall be included in every solicitation and resulting contract, and in every contract awarded without a solicitation, when the statement of work requires the design, development, or operation of a system of records on individuals to accomplish an agency function.

PRIVACY ACT

(a) The Contractor agrees:

(1) To comply with the Privacy Act of 1974 and the rules and regulations issued pursuant to the Act in the design, development, or operation of any system of records on individuals in order to accomplish an agency function when the contract specifically identifies (i) the system or systems of records and (ii) the work to be performed by the contractor in terms of any one or combination of the following: (A) design, (B) development, or (C) operation;

(2) to include the solicitation notification contained in this contract in every solicitation and resulting subcontract and in every subcontract awarded without a solicitation when the statement of work in the proposed subcontract requires the design, development, or operation of a system of records on individuals to accomplish an agency function; and

(3) to include this clause, including this paragraph (3), in all subcontracts awarded pursuant to this contract which require the design, development, or operation of such a system of records.

(b) In the event of violations of the Act, a civil action may be brought against the

agency involved where the violation concerns the design, development, or operation of a system of records on individuals to accomplish an agency function, and criminal penalties may be imposed upon the officers or employees of the agency where the violation concerns the operation of a system of records on individuals to accomplish an agency function. For purposes of the Act when the contract is for the operation of a system of records on individuals to accomplish an agency function, the contractor and any employee of the contractor is considered to be an employee of the agency.

(c) The terms used in this clause have the following meanings:

(1) "Operation of a system of records" means performance of any of the activities associated with maintaining the system of records including the collection, use, and dissemination of records.

(2) "Record" means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.

(3) "System of records" on individuals means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

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| 1-1.338 | Reserved |

§ 1-1.339 Energy conservation.

§ 1-1.339-1 Authority.

(a) The Energy Policy and Conservation Act (42 U.S.C. 6361(a)(1)) provides

PART 1-1.3

GENERAL POLICIES

1-1.339-3(f)

as follows: "The President shall, to the extent of his authority under other law, establish or coordinate Federal agency actions to develop mandatory standards with respect to energy conservation and energy efficiency to govern the procurement policies and decisions of the Federal Government and all Federal agencies, and shall take such steps as are necessary to cause such standards to be implemented."

(b) The authority of the President under the act was delegated by the President to the Administrator of the Office of Federal Procurement Policy in Executive Order 11312. The Administrator issued Policy Letter No. 76-1, which requested agencies " * * * to ensure that the principles of energy conservation and efficiency are applied in the procurement of property and services whenever the application of such principles would be meaningful and practicable and consistent with agency programs and operational needs." It also provided for implementation of the policy in the Federal Procurement Regulations.

§ 1-1.339-2 Procedures.

(a) Energy conservation and energy efficiency criteria shall be applied in the determination of requirements and source selection decisions whenever the application of such criteria would be meaningful, practical, and consistent with agency programs and operational needs. Under this policy, energy conservation and efficiency criteria shall be considered for application along with price and other relevant factors in the preparation of solicitations, the evaluation of offers, and the selection of bids and proposals for award.

(b) When procuring consumer products, executive agencies shall take into consideration energy use and efficiency labels and prescribed energy efficiency standards as they become available.

§ 1-1.339-3 Definitions.

(a) The term "consumer product" means any article (other than an automobile, as defined in section 501(1) of

the Motor Vehicle Information and Cost Savings Act) of a type—

(1) Which in operation consumes, or is designed to consume, energy; and

(2) Which, to any significant extent, is distributed in commerce for personal use or consumption by individuals; without regard to whether such article of such type is in fact distributed in commerce for personal use or consumption by an individual.

(b) The term "covered product" means a consumer product of one of the following types:

(1) Refrigerators and refrigerator-freezers.

(2) Freezers.

(3) Dishwashers.

(4) Clothes dryers.

(5) Water heaters.

(6) Room air-conditioners.

(7) Home heating equipment, not including furnaces.

(8) Television sets.

(9) Kitchen ranges and ovens.

(10) Clothes washers.

(11) Humidifiers and dehumidifiers.

(12) Central air-conditioners.

(13) Furnaces.

(14) Any other type of product which the Secretary of Energy classifies as a covered product pursuant to 42 U.S.C. 6292(b).

(c) The term "energy use and efficiency label" means a label required to be provided by manufacturer of a covered product pursuant to 42 U.S.C. 6296.

(d) The term "manufacturer" means any person who manufactures a consumer product.

(e) The term "energy efficiency standard" means a performance standard—

(1) Which prescribes a minimum level of energy efficiency for a covered product, determined in accordance with test procedures prescribed under 42 U.S.C. 6293; and

(2) Which includes any other requirements which the Secretary of Energy may prescribe under 42 U.S.C. 6295(c).

(f) The term "manufacture" means to manufacture, produce, assemble, or import.

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